

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,)	4:09CR3054
)	
Plaintiff,)	
)	
vs.)	MEMORANDUM AND ORDER
)	
ANTONIO O. HERNANDEZ,)	
)	
Defendant.)	

The defendant has been sentenced for conspiracy to distribute methamphetamine and sentenced to 151 months in prison, but the government has filed a motion (filing 58) to reduce the sentence under Rule 35(b) due to the defendant's substantial assistance to the government. That motion was heard on December 14, 2010, and a factual issue arose that requires assistance from medical professionals employed by or through the Bureau of Prisons.

There seems to be no doubt that the defendant was assaulted while in custody. That assault took place on or about July 8, 2009, in the Saline County Jail. Since then, the defendant claims that he has difficulty seeing and difficulty hearing. For present purposes, I assume, without deciding, that the defendant was assaulted because he intended to cooperate with the government and that intent was known to, or suspected by, the inmate or inmates who assaulted him. Under U.S.S.G. § 5K1.1(4), a judge is to consider "any injury suffered" when assessing the significance of the defendant's cooperation. Under these circumstances, and with the agreement of both parties,

IT IS ORDERED that:

1. The United States Bureau of Prisons shall designate a facility at which the defendant shall be examined pursuant to this order. Upon

such designation, the defendant, who is in custody, shall be transported to the place designated by the Bureau of Prisons by the U.S. Marshal. The defendant shall remain at the facility until released to the U.S. Marshal for return to Nebraska.

2. Pursuant to 18 U.S.C. § 3552(b), the Bureau of Prisons shall evaluate the defendant and advise me in writing regarding the following matters: (a) the defendant's present medical status regarding the ability of the defendant to see and to hear; (b) if the defendant has an impairment regarding his sight or hearing, the nature, extent and permanency of the impairment; (c) if the defendant has an impairment regarding his sight or hearing, a determination of whether the impairment is consistent with an assault; (d) any other related matters that the Bureau of Prisons or professional consultants believe are pertinent to the report or the factors set out in 18 U.S.C. § 3553(a). Unless extended by a subsequent order, the evaluation shall be submitted to the court and counsel within 60 days of the defendant being delivered to the medical center.

3. The probation officer assigned to this case (Laura L. Baumann) is requested to facilitate the implementation of this order and coordinate this case with the Bureau of Prisons. The probation officer shall provide the designated facility with all materials the officer believes will assist the facility in conducting the evaluation, including the presentence report, medical records obtained from counsel for the defendant (Mr. Eaton), and incident reports and medical records obtained from the Saline County Jail.

4. My chambers shall provide a copy of this memorandum and order to the probation officer. The Clerk shall provide a copy of this memorandum and order to the United States Marshals Service.

5. This matter is continued until further order of the court and the hearing set for January 20, 2011 is cancelled. My chambers will calendar this matter for internal review no later than 90 days from this date.

6. Upon receipt of the written report from the Bureau of Prison, I will give the parties an opportunity to respond to the report and then I will set the matter for hearing.

December 20, 2010.

BY THE COURT:

Richard G. Kopf
United States District Judge